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May 16, 2002

**VIA ELECTRONIC FILING**

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Notice of Ex Parte Presentation -- CC Docket No. 01-318, *Performance Measurements and Standards for Unbundled Network Elements and Interconnection***

Dear Ms. Dortch:

On May 15, 2002, Michael Kalb and Patrick Merrick of AT&T Corp. ("AT&T") and the undersigned counsel met with Uzoma Onyeije, John Stanley, Pamela Megna, Jonathan Kraushaar, Cathy Zima, Daniel Shiman, and Ben Childers of the Wireline Competition Bureau, Mark Stone of the Enforcement Bureau, and Jerry Stanshine of the Office of Engineering and Technology. The meeting concerned AT&T's views on the adoption of federal performance measures, standards, and remedies for unbundled network elements.

AT&T reviewed various points reflected in its comments and reply comments previously filed on record in this proceeding. Specifically, AT&T's representatives made the following points:

- The FCC should implement a federal enforcement regime based on the standards established in state performance plans. The FCC's plan should supplement the state plans, not supplant them. This approach is efficient and deregulatory because it builds on the work already completed by most states and does not impose significant additional administrative burdens on ILECs.
- The one area where a new federal performance standard is needed for UNEs concerns hot cuts. There is now clear evidence that marketplace considerations require on-time delivery of loops in excess of 98% and that significant service interruptions related to

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loop conversions be less than 1%. Preemption of lesser state standards is not necessary, but federal consequences should attach to performance falling below the proposed federal standard.

- The FCC should adopt a meaningful federal enforcement regime that imposes consequences that will impact ILECs' behavior. The current state enforcement plans do not impose sufficient consequences to deter performance failures; proof that the current fines are an acceptable cost of doing business is the lack of sustained ILEC improvement in meeting state performance standards.
- The federal enforcement plan should implement a truncated NAL process, which would satisfy due process concerns while ensuring that performance deficiencies bring swift and sure consequences.

In response to specific questions, the AT&T representatives also provided the following information:

- A federal enforcement plan based on state performance standards -- with the exception of state hot cut standards -- obviates the need to further "harmonize" state and federal measurements and standards and avoids the jurisdictional tensions that result from preemption.
- AT&T's proposal does not explicitly address what to do when state performance plans sunset because the bulk of the state plans do not sunset. The state plans, however, are subject to periodic review, either annually or semi-annually. Under AT&T's proposal, the modifications, if any, resulting from these periodic reviews would be automatically incorporated into the federal plan, as appropriate, without further action by the Commission.
- AT&T's proposed plan recommends that more significant penalties be applied for chronic or severe failures. A chronic failure can be assessed based on the repeated occurrence of a failure (*i.e.*, three or more months) and the duration of poor performance. A severe failure is measured by the magnitude of the violation (*i.e.*, the amount by which the ILEC's performance misses the benchmark or departs from parity).
- AT&T's evidence regarding the insufficiency of hot cut standards is that our commercial experience was presented in the Sczepanski Declaration, which demonstrates that the delays and risks of service disruption are unacceptable to customers. As discussed there, fully half of AT&T's facilities-based customers have canceled their UNE-L orders after a sale, but before or during provisioning of service, because of provisioning delays and service disruptions at the time of conversion. This demonstrates that customers are not willing to take the risk of being disconnected during a conversion. Customers expect --

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and obtain -- nearly flawless service when they switch to a competitive local carrier that employs UNE-P facilities or to a different long distance carrier, and they expect the same when they switch local service to a carrier that employs a UNE-L arrangement.

- As stated in its previously filed comments, if the FCC chooses to pursue such a course, AT&T supports the creation of a "best of the best" performance plan such as that proposed in S. 1364 (a bill introduced by Senator Hollings), in which a federal performance measurement and enforcement plan would be rapidly developed based on the best provisions developed in state plans.

Copies of this letter are being served on the FCC personnel who participated in the meeting. Any questions concerning this submission should be addressed to the undersigned.

Respectfully submitted,

/s/ James L. Casserly

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Angela F. Collins

cc: Uzoma Onyeije  
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